

1 RAOUL D. KENNEDY (CA Bar No. 40892)  
JAMES P. SCHAEFER (CA Bar No. 250417)  
2 JOAN E. SHREFFLER (CA Bar No. 245629)  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
3 Four Embarcadero Center, Suite 3800  
San Francisco, California 94111-4144  
4 Telephone: (415) 984-6400  
Facsimile: (415) 984-2698  
5 Email: rkennedy@skadden.com; jshreffler@skadden.com;  
jschaefer@skadden.com

6 JOSEPH E. MAIS (CA Bar No. 103756)  
7 ANTHONY L. MARKS (AZ Bar No. 012258)  
TIMOTHY J. FRANKS (CA Bar No. 197645)  
8 DAN L. BAGATELL (CA Bar No. 218879)  
PERKINS COIE BROWN & BAIN P.A.  
9 2901 North Central Avenue  
Post Office Box 400  
10 Phoenix, AZ 85001-0400  
Telephone: (602) 351-8000  
11 Facsimile: (602) 648-7000  
Email: jmais@perkinscoie.com; amarks@perkinscoie.com;  
12 tfranks@perkinscoie.com; dbagatell@perkinscoie.com

13 PHILIP A. LEIDER (CA Bar No. 229751)  
PERKINS COIE LLP  
14 Four Embarcadero Center, Suite 2400  
San Francisco, California 94111-4131  
15 Telephone: (415) 344-7000  
Facsimile: (415) 344-7050  
16 Email: pleider@perkinscoie.com

17 Attorneys for Defendant  
INTEL CORPORATION

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA  
20 SAN JOSE DIVISION  
21

22  
23 IN RE INTEL LAPTOP BATTERY  
LITIGATION

CASE NO. 5:09-cv-02889-JW (PVT)

24 **STIPULATION AND ORDER**  
25 **REGARDING THE PRODUCTION**  
26 **OF DOCUMENTS**  
27  
28

1 WHEREAS, the Parties have agreed upon a protocol for production of Intel Corporation's  
2 documents to plaintiffs that will consist of (1) the production from five Intel custodians of all  
3 non-privileged documents dated prior to June 25, 2009, that contain one or more agreed search  
4 terms, and (2) the production of non-privileged materials from the *Skold v. Intel* and *Barbara's*  
5 *Sales v. Intel* cases, and (3) the production of non-privileged documents dated prior to June 25,  
6 2009, that are in the possession, custody or control of the Business Application Performance Co.  
7 ("BAPCo") and that contain one or more agreed search terms ("First Production Materials");

8 WHEREAS, the First Production Materials are voluminous, and the Parties are anxious to  
9 produce those materials to plaintiffs' counsel as quickly as possible to meet the current case  
10 management schedule;

11 WHEREAS, Intel and BAPCo have taken measures they believe are reasonable in the  
12 circumstances to identify privileged materials within the First Production Materials;

13 WHEREAS, in producing the First Production Materials, the Parties do not intend for  
14 Intel or BAPCo to waive their right to assert the attorney-client privilege, work product  
15 immunity, or any other applicable privilege or immunity as to any documents produced;

16 WHEREAS, the Parties seek to create a mechanism to provide for the return of documents  
17 protected from disclosure by the attorney-client privilege, work product immunity, or any other  
18 applicable privilege or immunity should Intel or BAPCo inadvertently or unintentionally disclose  
19 any such documents in the First Production Materials;

20 NOW THEREFORE, the Parties stipulate as follows:

21 1. Intel and BAPCo do not waive, and are not estopped from asserting, the attorney-  
22 client privilege, work product immunity, or any other applicable privilege or immunity by  
23 producing documents or things, or making them available for inspection, in the First Production  
24 Materials. If the Producing Party becomes aware of any inadvertent or unintentional disclosure, it  
25 may designate such documents as within the attorney-client privilege, work product immunity or  
26 any other applicable privilege or immunity, and request in writing return of such documents to the  
27 Producing Party. Upon request by the Producing Party, the Receiving Party shall (a) refrain from  
28 any further examination or disclosure of such document(s); (b) immediately retrieve and return all

1 copies of such document(s) (including summaries and excerpts) to counsel for the Producing  
 2 Party; and (c) not use such document(s) for any purpose until further order of the Court. The  
 3 Producing Party must retain a copy of any document(s) that are returned until any disputes  
 4 concerning such documents have been resolved.

5 2. If a Receiving Party reasonably believes that a Producing Party has inadvertently  
 6 produced any documents, data or information that is potentially privileged, the Receiving Party  
 7 shall (a) refrain from any further examination or disclosure of such material; (b) promptly notify  
 8 the Producing Party and specifically identify the information (by document number or other  
 9 equally precise description); and (c) give the Producing Party ten (10) days to respond as to  
 10 whether the material was, in fact, inadvertently produced. If the Producing Party makes a claim  
 11 of inadvertent production, the provisions of paragraph (1) above shall apply.

12 3. Nothing herein shall prevent the Receiving Party from challenging the propriety of  
 13 the attorney-client privilege, work product immunity, or other applicable privilege or immunity  
 14 designation by filing a written motion filed under seal with the Court; provided, however, that  
 15 such challenge shall not assert as a ground for challenge the fact of the initial production or  
 16 inspection of the documents later designated as attorney-client privileged, work product, or  
 17 subject to another applicable privilege or immunity.

18 4. Pursuant to Fed. R. Evid. 502(e), this agreement is binding on third-parties,  
 19 provided that it has been entered by the Court.

20  
 21 **IT IS SO STIPULATED.**

22 DATED: April 14, 2010

GIRARD GIBBS LLP

23  
 24 By: /s/ Geoffrey A. Munroe  
 Geoffrey A. Munroe

25 Interim Class Counsel for Plaintiffs  
 26  
 27  
 28

1 DATED: April 14, 2010

PERKINS COIE BROWN & BAIN P.A.

2 By: /s/ Timothy J. Franks  
Timothy J. Franks

3 Attorneys for Defendant  
4 INTEL CORPORATION

5 DATED: April 14, 2010

NARANCIC & KATZMAN, PC

6 By: /s/ Perry J. Narancic  
Perry J. Narancic

7 Attorneys for Defendant  
8 BUSINESS APPLICATIONS  
9 PERFORMANCE CORPORATION

10 **ORDER**

11 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

12  
13 DATED: *April 15, 2010*

  
The Honorable Patricia V. Trumbull  
United States Magistrate